

REMARKS

This Application has been carefully reviewed in light of the Final Office Action mailed November 12, 2009. At the time of the Final Office Action, Claims 29-55 were pending in this Application. Claims 29-55 were rejected. Claims 1-28 were previously cancelled without prejudice or disclaimer. Applicants respectfully request reconsideration and favorable action in this case.

Rejections under 35 U.S.C. § 102

Claims 29-36 and 39 stand rejected by the Examiner under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 5,953,506 issued to Devendra Kalra et al. ("*Kalra*"). Applicants respectfully traverse and submit the cited art does not teach all of the elements of the claimed embodiment of the invention.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). Furthermore, "the identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co. Ltd.*, 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989). Applicants respectfully submit that the cited art as anticipated by the Examiner cannot anticipate the rejected Claims, because the cited art does not show all the elements of the present Claims.

The Examiner maintains his rejection from the previously issued office action. In the section "Response to Arguments" the Examiner further explains his rationale for maintaining the rejection. Applicant respectfully disagrees.

The Examiner stated that he interpreted *Kalra's* "transcoder" as the "switching element" of claim 29 because it is transmitting a message from one point to another point. Applicant agrees with the Examiner insofar that *Kalra's* "transcoder" can be interpreted to transmit to transmit a message from one point to another point. However, the functionality of a switching element in a communication network is not merely transmitting a message from one point to another. If Applicant intended such a broad limitation, Applicant would have

used the term “transmission element” or “transmitter.” However, independent claim 29 includes the limitation “switching element.” This term is clearly understood by a person skilled in the art as a device capable of switching between a plurality of receivers, such as a router or relay server. The specification sufficiently explains this functionality, for example on page 6, paragraph [0008], page 7, paragraph [0010], page 10, paragraph [0023], page 11, paragraph [0026], etc. The term “switching” itself implies at least a selection between two possibilities. However, contrary to the Examiner’s conclusion, *Kalra*’s transcoder does not provide this functionality.

With respect to the limitation “creating a plurality of variants”, the Examiner stated that the transcoder of *Kalra* is capable of creating such variants. However, Applicant would like to point out that *Kalra* does not disclose to actually create a plurality of different formats. *Kalra* merely states that transcoder 10 can operate with data that **is stored in one of** a plurality of different format. (*Kalra*, col. 4, line 1-30). Thus, in operation *Kalra*’s transcoder merely is presented with a single data file and creates another single variant. Independent claim 29 however requires to create a plurality of different variants from a single data file.

Finally, with respect to the selection process that is required by claim 29, the Examiner stated that *Kalra* discloses in Figure 13 a communication between a single stream server 400 and a single client 500. Applicant respectfully disagrees. As stated above, “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). Figure 13 refers to a different embodiment which lacks the limitations of claim 29. With respect to Figures 12 - 14, *Kalra* particularly states that a user makes a request for a browser to use an adaptive stream server. (*Kalra*, col. 15, line12-14). The browser then causes a client program to send its capabilities/information to the browser which then sends this information to the server 400. (*Kalra*, col. 15, line14-21) In response the server notifies the browser that the stream server can communicate directly with the stream client. (*Kalra*, col. 15, line21-27) thus, at no time does the server 400 notify the client 500 that any type of transmission message is available let alone “informing the first telecommunication device of the availability of the plurality of variants of the one or more useful data objects for transmission

to the first telecommunication device". All communication is started from the client 500. Hence, this embodiment and therefore *Kalra* in its entirety is directed to a completely different technical field and would not be considered by a person skilled in the art.

The Examiner failed to make a connection of how the specific embodiment shown in Figs. 12-14 has to be combined with any other teachings of *Kalra* to end in a method as claimed in independent claim 29. Moreover, even if it would be possible to make such an argument which Applicant does not concede, such an argument would be improper under 35 U.S.C. §102. The Examiner cannot select limitations from different embodiments combine them to a new embodiment to show anticipation.

In summary, independent claim 29 is clearly not anticipated by *Kalra*. Applicants respectfully submit that the dependent Claims are allowable at least to the extent of the independent Claim to which they refer, respectively. Thus, Applicants respectfully request reconsideration and allowance of the dependent Claims. Applicants reserve the right to make further arguments regarding the Examiner's rejections under 35 U.S.C. §102 or §103(a), if necessary, and do not concede that the Examiner's proposed rejections and/or combinations are proper.

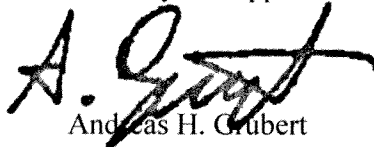
CONCLUSION

Applicants have made an earnest effort to place this case in condition for allowance in light of the remarks set forth above. Applicants respectfully request reconsideration of the pending claims.

Applicants believe there are no fees due at this time. However, the Commissioner is hereby authorized to charge any fees necessary or credit any overpayment to Deposit Account No. 50-4871 of King & Spalding L.L.P.

If there are any matters concerning this Application that may be cleared up in a telephone conversation, please contact Applicants' attorney at 512-457-2000.

Respectfully submitted,
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Date: February 5, 2010

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